

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Encore Operating LP and William A.)
Stewart d/b/a William A. Stewart &)
Associates,)

Plaintiffs,)

vs.)

Stephen Morris, Blue Diamond LLC,)
Terina Bailey, Joann Nelson, and Panda)
Petroleum, Inc.,)

Defendants;)

Case No. 1:06-cv-086

Stephen Morris, Blue Diamond LLC,)
Terina Bailey and Joann Nelson,)

Third-Party Plaintiffs,)

vs.)

Scott Schroeder,)

Third-Party Defendant.)

**ORDER RE ENCORE'S MOTION FOR
DISCOVERY**

Encore Operating LP and William A.)
Stewart & Associates,)

Plaintiffs,)

vs.)

Evertson Operating Company, Inc.,)
Evertson Well Service, Inc., Evertson)
Exploration, LLC, Evertson Oil Company,)
Inc., Evertson Limited Family Partnership,)
Evertson Management, Inc., Evertson)
Energy Partners, LLC, Evertson Energy)
Partners Royalty, LLC, Castronics, Inc.,)
and Everair, LLC,)

Defendants.)

Case No. 1:06-cv-088

Encore filed an Ex Parte Application for Temporary Restraining Order or, Alternatively, for Preliminary Injunction” on November 17, 2006. The court issued a temporary restraining order on November 21, 2006, enjoining defendants Stephen Morris, Blue Diamond LLC, Terina Bailey, Joann Nelson, and Panda Petroleum, Inc. (“Panda”) from using Encore’s confidential and proprietary information for any purpose and prohibiting the defendants leasing activities in the prospect area. It later extended the temporary restraining order until January 12, 2007, pursuant to a stipulation filed by the parties and scheduled a show cause hearing for January 9, 2007.

Panda filed a Motion for Discovery on December 23, 2006, asserting that it required documents from Encore to assist in its preparation for the show cause hearing. The court convened a hearing on Panda’s motion on January 3, 2007, after which it issued an order granting Panda’s motion directing Encore to produce the following documents subject to an accompanying protective order

On January 3, 2007, Encore filed its Motion for Discovery (in Case No. Case No. 1:06-cv-086), the ostensible basis being that, in the interest of fairness, Panda should be required to provide reciprocal pre-hearing discovery. Panda filed a response to Encore’s motion on January 5, 2007, stating that it would honor two of Encore’s discovery requests but that it objected to three others. It also filed a Motion to Dismiss for failure to state a claim upon which relief can be granted.

On January 9-10, 2007, the court conducted a show cause hearing in Bismarck, North Dakota. On January 17, 2007, it entered an order denying Encore’s request for a preliminary injunction against Panda. Given that Encore’s Motion for Discovery was made in anticipation of the show cause hearing, it is now moot. Accordingly, Encore’s Motion for Discovery is **DENIED** without prejudice. If necessary, the court will address any further discovery disputes once Panda’s

Motion to Dismiss has been addressed, Panda has filed an answer, and a scheduling/discovery order has been entered, unless the parties can show good cause as to why discovery is needed and any dispute must be resolved prior to this time. If any discovery issues or disputes arise in the interim, the parties are strongly encouraged to informally resolve them without the necessity of court intervention. In the event that reasonable, good faith efforts have been made by all parties to confer and attempt to resolve any differences, without success, the parties are then required to schedule a telephonic conference with the Magistrate Judge in an effort to try to resolve the discovery dispute prior to the filing of any motions.

IT IS SO ORDERED.

Dated this 1st of February, 2007.

/s/ Charles S. Miller, Jr.

Charles S. Miller, Jr.
United States Magistrate Judge